

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK
CENTRAL ISLIP DIVISION

IN RE

ANNA M. SACKOLWITZ

DEBTOR

CHAPTER 7

CASE NO. 8-19-73236-las

JUDGE: Hon. Louis A. Scarcella

MOTION DATE: JULY 30, 2019

MOTION TIME: 10:00 AM

PLEASE TAKE NOTICE that upon the annexed affirmation of Nicole DiStasio, an associate of the law firm of Shapiro, DiCaro & Barak, LLC, attorneys for Nationstar Mortgage LLC d/b/a Mr. Cooper as Servicer for Wells Fargo Bank, National Association, as Trustee for Banc of America Alternative Loan Trust 2005-8 Mortgage Pass-Through Certificates, Series 2005-8 ("Movant") will move this Court as set forth below:

JUDGE: HON. Louis A. Scarcella

RETURN DATE & TIME: July 30, 2019 at 10:00 AM

COURTHOUSE: United States Bankruptcy Court
Alfonse M. D'Amato U.S. Courthouse
290 Federal Plaza
Central Islip, NY 11722

RELIEF REQUESTED: The proposed order will seek to vacate the automatic stay imposed by 11 U.S.C. § 362(a) against subject property generally described as 177 Roberta Street, Valley Stream, NY 11580, pursuant to 11 U.S.C. § 362(d)(1) based upon the total debt due to Movant, resulting in Movant's lack of adequate protection or, pursuant to 11 U.S.C. § 362(d)(2), inasmuch as the estate has no equity in the aforementioned property with regard to the subject property.

PLEASE TAKE FURTHER NOTICE, that answering affidavits, if any, to the relief requested, must be served upon and received by Shapiro, DiCaro & Barak, LLC at their offices at 175 Mile Crossing Boulevard, Rochester, NY 14624 and filed with the Clerk of the United States Bankruptcy Court for the Eastern District of New York at United States Bankruptcy Court, Alfonse M. D'Amato U.S. Courthouse, 290 Federal Plaza, Central Islip, NY 11722 no later than seven (7) days prior to the return date of this motion.

Dated: June 4, 2019
Rochester, New York

/s/ *Nicole DiStasio*

Nicole DiStasio
Bankruptcy Attorney
Shapiro, DiCaro & Barak, LLC
Attorneys for Nationstar Mortgage LLC d/b/a Mr.
Cooper as Servicer for Wells Fargo Bank, National
Association, as Trustee for Banc of America
Alternative Loan Trust 2005-8 Mortgage Pass-
Through Certificates, Series 2005-8
175 Mile Crossing Boulevard
Rochester, New York 14624
Telephone: (585) 247-9000
Fax: (585) 247-7380

THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS NOTICE IS REQUIRED BY THE PROVISIONS OF THE FAIR DEBT COLLECTIONS PRACTICES ACT AND DOES NOT IMPLY THAT WE ARE ATTEMPTING TO COLLECT MONEY FROM ANYONE WHO HAS DISCHARGED THE DEBT UNDER THE BANKRUPTCY LAWS OF THE UNITED STATES.

TO: SERVICE LIST

UNITED STATES BANKRUPTCY COURT
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ANNA M. SACKOLWITZ

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CASE NO. 8-19-73236-las

JUDGE: Hon. Louis A. Scarcella

MOTION DATE: JULY 30, 2019

MOTION TIME: 10:00 AM

**AFFIRMATION IN SUPPORT OF
ENTRY OF AN ORDER GRANTING
RELIEF FROM THE AUTOMATIC STAY**

Nicole DiStasio, an attorney at law duly admitted to practice before the Courts of the State of New York and the U.S. District Court for the Eastern District of New York, hereby affirms the following to be true under penalty of perjury:

1. I am an associate with the law firm of Shapiro, DiCaro & Barak, LLC, attorneys for Nationstar Mortgage LLC d/b/a Mr. Cooper as Servicer for Wells Fargo Bank, National Association, as Trustee for Banc of America Alternative Loan Trust 2005-8 Mortgage Pass-Through Certificates, Series 2005-8 (“Movant”), a secured creditor of Anna M. Sackolwitz (“Debtor”) and David Sackolwitz (non-filing “Co-Borrower”). As such, I am fully familiar with the facts and circumstances of this case.

2. I make this Affirmation in support of the within request for an Order Granting Relief from the automatic stay, for cause, pursuant to 11 U.S.C. § 362(d)(1) and (2).

3. Jurisdiction is conferred on this Court by the provisions of 28 U.S.C. § 1334. This is a proceeding to terminate and annul the automatic stay and is therefore a “core” proceeding within the meaning of 28 U.S.C. § 157(b)(2).

4. Movant is a secured creditor of the Debtor pursuant to a note executed by David Sackolwitz (non-filing “Co-Borrower”) and Anna Sackolwitz on July 18, 2005, whereby David Sackolwitz and Anna Sackolwitz promised to repay the principal amount of \$333,000.00 plus interest to Bank of America, N.A. (the “Note”). To secure the repayment of the Note, David Sackolwitz and Anna Sackolwitz granted Bank of America, N.A., a mortgage, which was duly recorded in the Nassau County Clerk’s Office on August 29, 2005 at Liber Book: M 29305, page 358 (the “Mortgage,” Note and Mortgage, collectively, as the “Loan”), encumbering real property located at 177 Roberta Street, Valley Stream, NY 11580 (the “Property”). The Mortgage was transferred to Wells Fargo Bank, N.A. as Trustee for the certificate holders of Banc of America Alternative Loan Trust 2005-8 Mortgage Pass-Through Certificates, Series 2005-8, and said transfer was memorialized by an Assignment of Mortgage executed on May 6, 2013, which was duly recorded in the Nassau County Clerk’s Office on June 11, 2013 at Liber Book: M 38798, page 207 (the “Assignment of Mortgage”). The terms of the Loan were modified by agreement dated October 30, 2013 entered into by and between Nationstar Mortgage, LLC formerly known as Centex Home Equity Company, David Sackolwitz and Anna Sackolwitz creating a new principal balance in the amount of \$419,331.65 (the “Loan Modification Agreement”). Copies of the Note, Mortgage, Loan Modification Agreement, and Assignment of Mortgage are annexed hereto as **Exhibit “A”**. The Movant is in possession of the Original Note and the Note is located at Iron Mountain, Mr. Cooper Vault, 4117 Pinnacle Point, Dallas, Texas 75211.

5. Upon information and belief, the Debtor herein own(s) the Property.

6. Debtor filed a petition for relief under Chapter 7 of the U.S. Bankruptcy Code on or about May 3, 2019.

7. The Mortgage was in default on the day the Debtor filed this bankruptcy. Based upon said default, Movant initiated foreclosure proceedings in the Supreme Court of the State of New York, County of Nassau, under index number 1780/17. Judgment of Foreclosure & Sale (“JFS”) was entered January 28, 2019. Foreclosure sale was duly advertised in accordance with said judgment, with a sale date scheduled for May 7, 2019. The filing of the instant bankruptcy stayed said sale. Annexed hereto as **Exhibit “B”** are copies of the Judgment of Foreclosure & Sale and Notice of Sale.

8. Debtor has failed to make current mortgage payments due to Movant under the terms of the Loan. As a result, the Mortgage remains due for the February 1, 2015 payment and each subsequent payment thereafter.

9. The amount of delinquency due as of May 7, 2019 under the Mortgage is as follows:

44 Defaulted Monthly Payments at \$3,793.34 each (February 2015 through September 2018)	\$166,906.96
7 Defaulted Monthly Payments at \$4,111.06 each (October 2018 through April 2019)	\$28,777.42
1 Defaulted Monthly Payments at \$4,009.28 each (May 2019 through May 2019)	\$4,009.28
Fees & Costs Due (Lump Sum)	\$10,165.00
Total Delinquencies	<hr/> \$209,858.66

10. A copy of the Relief from Stay-Real Estate and Cooperative Apartments (“Affidavit”) is annexed hereto as **Exhibit “C”**.

11. Moreover, in view of the total debt due to Movant and in light of the Debtor’s failure to make payments, Movant is no longer adequately protected. The automatic stay must be vacated for cause pursuant to 11 U.S.C. § 362(d)(1).

12. As set forth in the Affidavit, as of May 7, 2019, the approximate debt due and owing to Movant equals \$577,739.14. The debt is accruing interest at a rate of 5.75% per annum.

13. Based upon the Debtor's Schedule D, the Property has an estimated fair value of approximately \$450,000.00. A copy of Debtor's Schedule D is annexed hereto as **Exhibit "D"**. As indicated in paragraph 12 herein above, the total debt to Movant equals \$577,739.14. As such, there is no dispute that the debt due to the Movant exceeds the value of the Property. By the Debtor's own valuation, the estate has no equity in the Property sought to be foreclosed. Accordingly, relief from the automatic stay is also warranted under 11 U.S.C. § 362(d)(2).

14. Movant, according to the laws of the State of New York and the terms and conditions of the Mortgage, desires to continue and/or commence foreclosure proceedings with respect to the Property.

15. The Debtor, Co-Borrower, Debtor's Attorney, the Chapter 7 Trustee and the Office of the United States Trustee have each been duly served with the within Notice of Motion, Affirmation, Exhibits and proposed Order Vacating Stay, as more fully set forth in the annexed affidavit of mailing.

16. No prior application has been made for the relief requested herein.

17. Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase order, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements in support of right to seek a lift of the automatic stay and foreclose if necessary.

WHEREFORE, Movant respectfully requests an Order of this Court vacating the automatic stay for cause pursuant to 11 U.S.C. § 362(d)(1) and (2) as to the aforementioned Property; allowing Movant, its agents, assigns or successors in interest, leave to exercise its rights pursuant to the Note and Mortgage including but not limited to foreclose the Mortgage secured by the subject Property; and for such other, further and different relief as to this Court may seem just, proper and equitable.

Dated: June 4, 2019
Rochester, New York

/s/ *Nicole DiStasio*

Nicole DiStasio
Bankruptcy Attorney
Shapiro, DiCaro & Barak, LLC
Attorneys for Nationstar Mortgage LLC d/b/a Mr.
Cooper as Servicer for Wells Fargo Bank, National
Association, as Trustee for Banc of America
Alternative Loan Trust 2005-8 Mortgage Pass-
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175 Mile Crossing Boulevard
Rochester, New York 14624
Telephone: (585) 247-9000
Fax: (585) 247-7380

SHAPIRO, DICARO & BARAK, LLC

Attorneys for Nationstar Mortgage LLC d/b/a Mr. Cooper
as Servicer for Wells Fargo Bank, National Association, as
Trustee for Banc of America Alternative Loan Trust 2005-
8 Mortgage Pass-Through Certificates, Series 2005-8
175 Mile Crossing Boulevard
Rochester, New York 14624
Telephone: (585) 247-9000, Fax: (585) 247-7380
Nicole DiStasio

UNITED STATES BANKRUPTCY COURT
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CENTRAL ISLIP DIVISION

IN RE

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DEBTOR

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JUDGE: Hon. Louis A. Scarcella

MOTION DATE: JULY 30, 2019

MOTION TIME: 10:00 AM

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
)ss:
COUNTY OF MONROE)

I, Lora Mosher, being sworn, say, I am not a party to this action; I am over 18 years of age,
I reside in Rochester, New York.

On June 4, 2019 I served the within Notice of Motion, Affirmation in Support, Exhibits
and Proposed Order Granting Relief from the Automatic Stay upon:

TO: Debtor
Anna M. Sackolwitz
177 Roberta Street
Valley Stream, NY 11580

Co-Borrower
David Sackolwitz
177 Roberta Street
Valley Stream, NY 11580

Attorney for Debtor
Elliot S. Schlissel
Schlissel DeCorpo LLP
479 Merrick Road
Lynbrook, NY 11563

Trustee
R. Kenneth Barnard
3305 Jerusalem Ave
Suite 215
Wantagh, NY 11793

U.S. Trustee
Long Island Federal Courthouse
560 Federal Plaza - Room 560
Central Islip, NY 11722

at the addresses designated by the foregoing individuals for that purpose by depositing a true copy of same enclosed in a postpaid, properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Date June 4, 2019

Lora Moshier

Lora Moshier
Bankruptcy Assistant
Shapiro, DiCaro & Barak, LLC
Attorneys for Nationstar Mortgage LLC
d/b/a Mr. Cooper as Servicer for Wells Fargo
Bank, National Association, as Trustee for
Banc of America Alternative Loan Trust
2005-8 Mortgage Pass-Through Certificates,
Series 2005-8
175 Mile Crossing Boulevard
Rochester, New York 14624
Telephone: (585) 247-9000
Fax: (585) 247-7380

Sworn to before me this
4 day of June, 2019

[Signature]
Notary Public

KATRINA BELLIS
Notary Public, State of New York
No. 01BE6128872
Qualified in Monroe County
Commission Expires June 20, 2021

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**ORDER GRANTING RELIEF FROM
THE AUTOMATIC STAY**

UPON consideration of the Application of Nationstar Mortgage LLC d/b/a Mr. Cooper as Servicer for Wells Fargo Bank, National Association, as Trustee for Banc of America Alternative Loan Trust 2005-8 Mortgage Pass-Through Certificates, Series 2005-8, ("Movant") dated June 4, 2019, and it appearing that neither the Debtor nor the Chapter 7 Trustee nor the U.S. Trustee have opposition to the motion brought by Movant, for relief from the automatic stay, and with good cause appearing therefore, it is

ORDERED that the automatic stay, heretofore in effect pursuant to 11 U.S.C. § 362(a), is hereby vacated for cause pursuant to 11 U.S.C. § 362(d) as to Movant, its agents, assigns or successors in interest, so that Movant, its agents, assigns or successors in interest, may take any and all actions pursuant to the Note and Mortgage and applicable state law including but not limited to foreclose its mortgage on premises known as 177 Roberta Street, Valley Stream, NY 11580 without further application to this Court, and it is further

ORDERED that in the event this case is converted to a case under any other chapter of the U.S. Bankruptcy Code, this Order will remain in full force and effect; and it is further

ORDERED that the Movant shall promptly report and turn over to the Chapter 7 Trustee any surplus monies realized by any sale of the Property.